

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: <b>French et al.</b>	§	Group Art Unit: <b>2144</b>
	§	
Serial No.: <b>09/731,631</b>	§	Examiner: <b>Thanh, Tammy Nguyen</b>
	§	
Filed: <b>December 7, 2000</b>	§	Attorney Docket No.: <b>AUS920000800US1</b>
	§	
For: <b>Method and System for Selecting an Operating System at User Login on a Target Device</b>	§	Confirmation No.: <b>1071</b>

35525

PATENT TRADEMARK OFFICE  
CUSTOMER NUMBER

Commissioner for Patents  
P.O. Box 1450  
Alexandria VA 22313-1450

RESPONSE TO NOTICE OF NON-COMPLIANT APPEAL BRIEF

Sir:

A Notice of Non-Compliant Appeal Brief was received by Applicant stating that "the appeal brief filed on November 30, 2007 is considered defective because the brief was not in compliance with 37 C.F.R. § 41.37 and 35 U.S.C. § 112, First and Second Paragraphs." A copy of the Notice of Non-Compliant Appeal Brief is attached hereto.

No fees are believed to be required. If, however, any fees are required, I authorize the Commissioner to charge these fees which may be required to IBM Corporation Deposit Account No. 09-0447. No extension of time is believed to be necessary. If, however, an extension of time is required, the extension is requested, and I authorize the Commissioner to charge any fees for this extension to IBM Corporation Deposit Account No. 09-0447.

In response to the Notification of Non-Compliant Appeal Brief dated August 19, 2008, please reconsider the holding of defectiveness as follows:

### **REMARKS**

In the Notification of Defective Appeal Brief, the Appeal Brief filed on November 30, 2007, was held defective because the brief was not in compliance with 37 C.F.R. § 41.37 and 35 U.S.C. § 112, First and Second Paragraphs.

In order to address the Examiner's concerns, a Supplemental Appeal Brief is submitted herewith. It is respectfully submitted that the Supplemental Appeal Brief filed herewith is in compliance with 37 C.F.R. § 41.37. Appellant respectfully requests that the Supplemental Appeal Brief be entered. The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

DATE: September 17, 2008

Respectfully submitted,

/Theodore D. Fay/

Theodore D. Fay  
Reg. No. 48,504  
Yee & Associates, P.C.  
P.O. Box 802333  
Dallas, TX 75380  
(972) 385-8777  
Attorney for Applicants

TF/nf



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/731,631	12/07/2000	Steven M. French	AUS920000800US1	1071

35525 7590 08/19/2008

IBM CORP (YA)  
C/O YEE & ASSOCIATES PC  
P.O. BOX 802333  
DALLAS, TX 75380

EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 08/19/2008

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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IBM CORP (YA)  
C/O YEE & ASSOCIATES PC  
P.O. BOX 802333  
DALLAS, TX 75380

**EXAMINER**

Thanh Tammy Nguyen

ART UNIT	PAPER
2144	20080812

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**Commissioner for Patents**

The Appellants of the Appeal Brief filed on November 30, 2007 are required to submit a new Brief in compliance with 37 C.F.R. § 41.37 and Brief compliance with 35 U.S.C. § 112, First and Second Paragraph of Independent claims 11, 18 and dependent claims 12-17, and 18-23, in light of the identification of corresponding structure.

/Thanh Tammy Nguyen/  
Primary Examiner, Art Unit 2144

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: <b>French et al.</b>	§	Group Art Unit: <b>2144</b>
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Serial No. <b>09/731,631</b>	§	Examiner: <b>Thanh, Tammy Nguyen</b>
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Alexandria, VA 22313-1450

**SUPPLEMENTAL APPEAL BRIEF (37 C.F.R. 41.37)**

This brief is in furtherance of the Notice of Appeal, filed in this case on May 30, 2006.

### **REAL PARTY IN INTEREST**

The real party in interest in this appeal is the following party: International Business Machines Corporation of Armonk, New York.

### **RELATED APPEALS AND INTERFERENCES**

This appeal has no related proceedings or interferences.

## **STATUS OF CLAIMS**

### **A. TOTAL NUMBER OF CLAIMS IN APPLICATION**

The claims in the application are: 1-23

### **B. STATUS OF ALL THE CLAIMS IN APPLICATION**

Claims canceled: None

Claims withdrawn from consideration but not canceled: None

Claims pending: 1-23

Claims allowed: None

Claims rejected: 1-23

Claims objected to: None

### **C. CLAIMS ON APPEAL**

The claims on appeal are: 1-23



### **STATUS OF AMENDMENTS**

No Amendments after the Final Office Action dated February 27, 2006 have been filed.

## **SUMMARY OF CLAIMED SUBJECT MATTER**

### **A. CLAIM 1 - INDEPENDENT**

Claim 1 is directed to a method of selecting an operating system at a target device (Specification p. 6, ll. 2-6; Fig. 1, reference numerals 108, 110, and 112) in communication with a server (Specification p. 3, ll. 3-4 and p. 6, ll. 16-23; Fig. 1, reference numerals 104 and 105), comprising:

initiating a network bootstrap program at the target device (Specification p. 3, ll. 4-6 and p. 9, ll. 20-22; Fig. 4, reference numeral 402);

sending a bootstrap list command from the target device to the server (Specification p. 3, ll. 4-6 and p. 9, ll. 26-28; Fig. 4, reference numeral 406);

receiving an operating systems list of at least one operating system prior to executing an operating system at the target device (Specification p. 3, ll. 6-8 and p. 11, ll. 8-12; Fig. 5, reference numeral 516); and

selecting a target operating system from the operating systems list (Specification p. 3, ll. 6-8 and p. 9, ll. 13-18; Fig. 5, reference numeral 518), wherein the target device is to be remotely booted by the server (Specification p. 1, ll. 12-15 and p. 9, l. 15 – p. 13, l. 8; Figs. 4, 5, and 6).

### **B. CLAIM 11 - INDEPENDENT**

Claim 11 is directed to a computer program product in a computer usable medium for selecting an operating system at a target device (Specification p. 3, ll. 17-19 and p. 6, ll. 2-6; Fig. 1, reference numerals 108, 110, and 112), comprising:

means (Specification p. 3, ll. 19-20 and p. 9, ll. 20-22; Fig. 4, reference numeral 402) for initiating network bootstrap program code at the target device (Specification p. 3, ll. 19-20 and p. 9, ll. 20-22; Fig. 4, reference numeral 402);

means (Specification p. 3, ll. 20-21 and p. 9, ll. 23-25; Fig. 4, reference numeral 404) for receiving a command requesting an operating systems list of at least one operating system (Specification p. 3, ll. 20-21 and p. 9, ll. 23-25; Fig. 4, reference numeral 404);

means (Specification p. 3, ll. 21-22 and p. 10, ll. 4-6; Fig. 4, reference numeral 410) for sending the operating systems list to the target device before an operating system is executed at the target device (Specification p. 3, ll. 21-22 and p. 10, ll. 4-6; Fig. 4, reference numeral 410); and

means (Specification p. 3, ll. 22-23 and p. 10, ll. 6-7; Fig. 4, reference numeral 412) for receiving a selection of a target operating system from the operating systems list (Specification p. 3, ll. 22-23 and

p. 10, ll. 6-7; Fig. 4, reference numeral 412), wherein the target device is to be remotely booted by the server (Specification p. 1, ll. 12-15 and p. 9, l. 15 – p. 13, l. 8; Figs. 4, 5, and 6).

**C. CLAIM 12 - DEPENDENT**

Claim 12 is directed to the program of claim 11 further comprising:

means (Specification p. 3, ll. 24-25 and p. 11, ll. 21-22; Fig. 5, reference numeral 522) for sending the target operating system to the target device (Specification p. 3, ll. 24-25).

**D. CLAIM 13 - DEPENDENT**

Claim 13 is directed to the program of claim 11 further comprising:

means (Specification p. 3, ll. 25-26 and p. 11, ll. 13-18; Fig. 5, reference numeral 518) for determining a default operating system (Specification p. 3, ll. 25-26).

**E. CLAIM 14 - DEPENDENT**

Claim 14 is directed to the program of claim 11 further comprising:

means (Specification p. 3, ll. 26-27 and p. 11, ll. 23-25; Fig. 5, reference numeral 524) for relocating the network bootstrap program code after the target operating system is selected (Specification p. 3, ll. 26-27; Fig. 5, reference numeral 524).

**F. CLAIM 15 - DEPENDENT**

Claim 15 is directed to the program of claim 11 further comprising:

means (Specification p. 3, ll. 27-29 and p. 10, ll. 18-30; Fig. 4, reference numeral 414) for determining the target operating system from a configuration file of the target device (Specification p. 3, ll. 27-29).

**G. CLAIM 16 - DEPENDENT**

Claim 16 is directed to the program of claim 11 further comprising:

means (Specification p. 3, ll. 29-30 and p. 11, ll. 21-22; Fig. 5, reference numeral 522) for receiving the selection of the target operating system from a user of the target device (Specification p. 3, ll. 29-30; Fig. 5, reference numeral 516).

**H. CLAIM 17 - DEPENDENT**

Claim 17 is directed to the program of claim 16 further comprising:

means (Specification p. 3, l. 30 – p. 4, l. 2 and p. 12, ll. 8-20; Fig. 4 and 6, reference numerals 414 and 615) for determining at least one operating system available to the user (Specification p. 3, l. 30 – p. 4, l. 2).

**I. CLAIM 18 - INDEPENDENT**

Claim 18 is directed to a network data processing system (Specification p. 4, ll. 3-4; Fig. 1, reference numeral 100) comprising:

means (Specification p. 4, ll. 4-5; Fig. 4, reference numeral 402) for initiating a network bootstrap program at a target device (Specification p. 4, ll. 4-5; Fig. 4, reference numeral 402), the target device to be remotely booted by the server (Specification p. 1, ll. 12-15 and p. 9, l. 15 – p. 13, l. 8; Figs. 4, 5, and 6);

means (Specification p. 4, ll. 5-6; Fig. 4, reference numeral 406) for sending a command requesting an operating systems list of at least one operating system (Specification p. 4, ll. 5-6; Fig. 4, reference numeral 406);

means (Specification p. 4, ll. 6-7; Fig. 5, reference numeral 516) for receiving the operating systems list prior to executing an operating system at the target device (Specification p. 4, ll. 6-7; Fig. 5, reference numeral 516); and

means (Specification p. 4, ll. 7-8; Fig. 5, reference numeral 518) for selecting a target operating system from the operating systems list at the target device (Specification p. 4, ll. 7-8; Fig. 5, reference numeral 518).

**J. CLAIM 19 - DEPENDENT**

Claim 19 is directed to the system of claim 18 further comprising:

means (Specification p. 4, ll. 9-10 and p. 11, ll. 21-22; Fig. 5, reference numeral 522) for receiving the target operating system at the target device (Specification p. 4, ll. 9-10).

**K. CLAIM 20 - DEPENDENT**

Claim 20 is directed to the system of claim 18 further comprising:

means (Specification p. 4, ll. 10-11 and p. 11, ll. 26-27; Fig. 5, reference numeral 528) for executing the target operating system at the target device (Specification p. 4, ll. 10-11).

**L. CLAIM 21 - DEPENDENT**

Claim 21 is directed to the system of claim 18 further comprising:

means (Specification p. 4, ll. 11-12 and p. 11, ll. 23-25; Fig. 5, reference numeral 524) for relocating the network bootstrap program after the target operating system is selected (Specification p. 4, ll. 11-12; Fig. 5, reference numeral 524).

**M. CLAIM 22 - DEPENDENT**

Claim 22 is directed to the system of claim 18 further comprising:

means (Specification p. 4, ll. 13-14 and p. 10, ll. 18-30; Fig. 4, reference numeral 414) for determining the target operating system from a configuration file of the target device (Specification p. 4, ll. 13-14).

**N. CLAIM 23 - DEPENDENT**

Claim 23 is directed to the system of claim 18 further comprising:

means (Specification p. 4, ll. 13-14 and p. 11, ll. 13-18; Fig. 5, reference numeral 518) for determining the target operating system from input of a user of the target device (Specification p. 4, ll. 13-14; Fig. 5, reference numeral 518).

## **GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

The grounds of rejection to review on appeal are as follows:

### **A. GROUND OF REJECTION 1**

Whether the examiner failed to state a *prima facie* obviousness rejection against claims 1-23 as obvious under 35 U.S.C. § 103 over *Beelitz et al.*, Generation of a Compatible Order for a Computer System, U.S. Patent 6,182,275 (January 30, 2001) (hereinafter “*Beelitz*”) in view of *Barr et al.*, Insuring the Integrity of Remote Boot Client Data, U.S. Patent 6,189,100 (February 13, 2001) (hereinafter “*Barr*”).

## **ARGUMENT**

### **A. GROUND OF REJECTION 1 (Claims 1-23)**

The only ground of rejection is whether the examiner failed to state a *prima facie* obviousness rejection against claims 1-23 as obvious under 35 U.S.C. § 103 over *Beelitz et al.*, Generation of a Compatible Order for a Computer System, U.S. Patent 6,182,275 (January 30, 2001) (hereinafter “*Beelitz*”) in view of *Barr et al.*, Insuring the Integrity of Remote Boot Client Data, U.S. Patent 6,189,100 (February 13, 2001) (hereinafter “*Barr*”).

The 103(a) rejection of claims 1-23 has been traversed. In order to maintain this 103(a) rejection, each and every element of the claimed invention must be taught or suggested by the references alone or in combination. Because the references do not teach or suggest each and every element, this rejection must fall.

Claims 1, 11, and 18 require, *inter alia*, “initiating a network bootstrap program at the target device, sending a bootstrap list command from the target device to the server, receiving an operating systems list of at least one operating system prior to executing an operating system at the target device, and selecting a target operating system from the operating systems list, wherein the target device is to be remotely booted by the server.”

The Examiner correctly notes that *Beelitz* does not teach or suggest such an element, and instead cites to *Barr* for such teachings. Specifically, the Examiner asserts that it “would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the *Barr*’s (sic) into the computer system of *Beelitz* to because (sic) it would have to (sic) provided an efficient system that lets a client and server to exchange (sic) a shared encryption key using the secure remote boot process.” See, **75** of the February 27, 2006 office action.

The Appellants traverse the Examiner’s assertion because *Beelitz* in view of *Barr* does not teach or suggest each claim limitation, and also because *Beelitz* specifically teaches away from such a combination, because there must be a reasonable expectation of success, and because the mere ability to combine references is insufficient to support a rejection.

#### **A.1. Beelitz in view of Barr does not teach or sunnest each claimed element**

At most, *Beelitz* discloses that a targeted computer system 137 is initially booted up to perform the operations and instructions as per associated shell script files to load the selected programs onto its hard drive and to run the tests. *Beelitz* does not teach, as suggested by the Examiner, that the targeted computer system either “initiates a network bootstrap program at the target device” or sends “a bootstrap

list command from the target device to the server." The Examiner cites to col. 14, line 66 to col. 15 line 7 for such a teaching, but such reliance is misplaced, as that citation merely teaches:

In one embodiment, the targeted computer system is connected through a network card to server in manufacturing. The targeted computer system 137 is initially booted up to perform the operations and instructions as per associated shell script files to load the selected programs onto its hard drive and to run the tests. In one embodiment, the selected software programs and operating system can be down loaded and installed on the targeted computer system via the Internet.

Thus, while Beelitz teaches that the target computer system is "booted up to perform the operations and instructions as per associated shell scripts to load the selected programs onto its hard drive," Beelitz does not teach or suggest either "initiating a network bootstrap program at the target device" or "sending a bootstrap list command from the target device to the server," as claimed in claim 1, 11 and 18. Barr does not cure this defect.

Similarly, Beelitz does not teach or suggest "receiving an operating systems list of at least one operating system prior to executing an operating system at the target device," as further claimed in claims 1, 11, and 18. Strangely, the Examiner cites to the same section of Beelitz, but a review of the cited section does not reveal any such disclosure or teaching. Barr does not cure this defect.

Thus, the references, alone or in combination, do not teach each element of the claims.

#### **A.2. Beelitz teaches away from the combination**

Beelitz teaches a generation of a compatible order for a computer system. The Beelitz system is for specifying, ordering, and building a build-to-order computer system, such that a purchaser of a build-to-order computer system can buy and order such a computer over a computer network such as the Internet. See, abstract, Beelitz.

Beelitz specifically teaches "[I]n step 207, control 103 provides to the user interface 105 a list of the operating system types available." (emphasis added) at column 7 lines 55-56. Furthermore, "[I]n step 204, control 103 accesses the master data base 125 to create or generate a list of operating system types available for the targeted computer system" (column 7 lines 35-37).

Control 103 "receives an indication from a user interface 105 indicating the desire to purchase a computer system." Column 7, lines 30-32 (emphasis added). Thus, *control 103 is distinguished from the targeted computer system 137 (FIG. 1 of Beelitz) and the terminal or user interface 105 (FIG. 1 of Beelitz)*. One of ordinary skill in the art would recognize that sending a list of available operating



systems to a user who is purchasing a build-to-order computer is dramatically different than sending a list of available operating systems to the build-to-order computer.

Beelitz teaches that it has been known to install software programs and to perform tests on computer systems *before they are shipped* to businesses or individual customers. The goal of software installation and testing, according to Beelitz, is to efficiently produce a useful, reliable, computer system which may be *delivered* to businesses and individuals free from errors and ready to run. Beelitz, column 1, lines 56-61.

One of ordinary skill in the art would recognize that shipping a computer to a business or individual customer requires *disconnecting* any network connections used for software installation and testing. Those of ordinary skill in the art would also recognize that disconnecting a network connection terminates the connection, and therefore disconnecting a network connection is inconsistent with a target device [is] to be remotely booted by the server. Thus, one of ordinary skill in the art could not possibly be motivated to make the modifications suggested by the Examiner, as Beelitz unequivocally teaches away from the combination.

This lack of motivation is further emphasized by the failure of Beelitz to denounce its generation of a compatible order for a computer system as less than an ideal method of generating a compatible order for a computer system, much less denounce its methods as less than ideal for booting a target computer system. In addition, Barr fails to denounce its methods for ensuring the integrity of remote boot client data as less than perfect, or teach the desirability of the modification suggested by the Examiner.

The Examiner's proffered motivation rings hollow. See, 74 of the Feb. 27, 2006 office action. Beelitz does not teach the desirability of exchanging shared encryption keys, and therefore one of ordinary skill in the art would not be motivated to consult any references teaching methods of sharing encryption keys based on the teachings of Beelitz. In addition, Barr does not teach the desirability of generating a compatible order for a computer system, so one of ordinary skill in the art would not be motivated to consult references teaching any such methods. Use of such disparate references in this ad-hoc rejection would indicate the use of impermissible hindsight.

### **A.3. There is no reasonable expectation of success**

Similarly, there is no reasonable expectation of success based on the combination of references. MPEP 2 143.02, *In re Merck & Co.*, 800 F.2d 109 1 (Fed. Cir. 1986). Here, modifying the Beelitz system to feature the remote boot taught by Barr would entirely defeat the purpose of Beelitz, and cannot lead to any reasonable expectation of success. Indeed, one of ordinary skill in the art would more likely find a reasonable expectation of *failure*.

The Examiner asserts that it "would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the Barr's (sic) into the computer system of Beelitz to because (sic) it would have to (sic) provided an efficient system that lets a client and server to exchange (sic) a shared encryption key using the secure remote boot process." However, any such modification would in fact change the function or structure of the network, contrary to the Examiner's assertions. The function and structure of the Beelitz network is to efficiently produce a useful, reliable, computer system which may be *delivered* to businesses and individuals free from errors and ready to run. Beelitz, column 1, lines 56-61. Modifying the function or structure of the Beelitz network would not result in the claimed invention, but would rather result in a business or individual purchasing a built-to-order computer that is not delivered to the purchasing business or individual, but rather a computer that remains at the factory, sitting on an assembly line. Such a result cannot be considered anything less than an abject failure from both the consumer side (the consumer does not receive the purchased computer) and the supplier side (inventory eternally accumulates until the customer dissatisfaction resulting from failure to receive the purchased computer destroys the business).

#### **A.4. The mere ability to combine references is insufficient to support a rejection**

The mere fact that Beelitz can be modified in view of Barr to obtain the claimed invention (which Appellants deny) does not render the resultant modification obvious unless the prior art also suggests the desirability of the combination. See, *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990) (Claims were directed to an apparatus for producing an aerated cementitious composition by drawing air into the cementitious composition by driving the output pump at a capacity greater than the feed rate. The prior art reference taught that the feed means can be run at a variable speed, however the court found that this does not require that the output pump be run at the claimed speed so that air is drawn into the mixing chamber and is entrained in the ingredients during operation. Although a prior art device "may be capable of being modified to run the way the apparatus is claimed, there must be a suggestion or motivation in the reference to do so." 916 F.2d at 682, 16 USPQ2d at 1432.). See also *In re Fritch*, 972 F.2d 1260, 23 USPQ2d 1780 (Fed. Cir. 1992) (flexible landscape edging device which is conformable to a ground surface of varying slope not suggested by combination of prior art references).

The basis for the Examiner's assertion is that "would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the Barr's (sic) into the computer system of Beelitz to because (sic) it would have to (sic) provided an efficient system that lets a client and server to exchange (sic) a shared encryption key using the secure remote boot process." However, the Examiner simply cannot conclusively assert that an implementation of the remote boot feature taught by Barr would

permit the ability to efficiently produce a useful, reliable, computer system which may be delivered to businesses and individuals free from errors and ready to run. See, Beelitz, column 1, lines 56-61. Indeed, implementing a remote boot feature, as allegedly taught by Barr, would simply not work in a Beelitz system and would destroy the principle of operation of Beelitz.

**A.5. Dependent claims 6, 8, 9, 14, 16, 21 and 23**

In addition to the above arguments, Beelitz in view of Barr fails to teach or suggest each and every element of claims 6, 8, 9, 14, 16, 21 and 23.

Claims 6, 14, and 21 require "relocating the network bootstrap program after the target operating system is selected" as claimed in claims 6, 14, and 21. The Examiner's citation to Beelitz, column 8, lines 40-45 is misplaced, as no such teaching is made. Instead, Beelitz discloses creating a system descriptor file that includes the specific part number for the selected version and language of the selected operating system, including a prefix. This disclosure simply cannot render claims for relocating the network bootstrap program after the target operating system is selected obvious. Barr does not cure this defect. Withdrawal of the rejections to claims 6, 14, and 21 is requested for at least this additional reason.

Claims 8, 16, and 23 require "the target operating system is selected by a user of the target device". Beelitz in view of Barr does not teach such an element. At most, the Examiner cites to Beelitz, arguing that Beelitz teaches that the target operating system is determined by a "sniffing feature" to determine that the list of software programs is compatible with the hardware. Beelitz provides an example that the "software sniffer" determines that the target has a certain size RAM, and only presents operating systems that are compatible with the size of the RAM in the target. See, Beelitz, column 18 line 60 to column 19 line 3. Thus, Beelitz discloses that the target operating system is determined by a system configuration, while the instant application claims that the target operating system is selected by a user. Indeed, Beelitz does not teach that a user has any access whatsoever to the target device, as the "user" is purchasing a build-to-order computer, and does not yet have possession of the computer - thus, the Beelitz user is physically unable to select any operating systems at the target device. Barr does not cure this defect.

Claim 9 requires determining from a user profile, at least one available operating system." Beelitz in view of Barr makes no such teaching. The Examiner relies solely on Beelitz, but Beelitz does not disclose a user profile at all. The Examiner's reliance on column 7 lines 49-56 for such a disclosure is misplaced, as Beelitz merely discloses that a master database is consulted (see column 7 lines 36-41) at a server. No user profile is disclosed. Barr does not cure this defect. Therefore, Appellants request the

withdrawal of the rejections to claims 1, 11, and 18, as well as claims 2- 10, 12- 17, and 18-23 depending directly or indirectly from one of claims 1, 11, or 18.

**B. CONCLUSION**

As shown above, the examiner has failed to state valid rejections against any of the claims. Therefore, Applicants request that the Board of Patent Appeals and Interferences reverse the rejections. Additionally, Applicants request that the Board direct the examiner to allow the claims.

/Theodore D. Fay/

Theodore D. Fay  
Reg. No. 48,504  
Yee & Associates, P.C.  
P.O. Box 802333  
Dallas, TX 75380  
(972) 385-8777

TF/nf

## CLAIMS APPENDIX

The text of the claims involved in the appeal is as follows:

1. A method of selecting an operating system at a target device in communication with a server, comprising:
  - initiating a network bootstrap program at the target device;
  - sending a bootstrap list command from the target device to the server;
  - receiving an operating systems list of at least one operating system prior to executing an operating system at the target device; and
  - selecting a target operating system from the operating systems list, wherein the target device is to be remotely booted by the server.
2. The method of claim 1 further comprising:
  - receiving instructions for the target operating system.
3. The method of claim 1 further comprising:
  - requesting the instructions for the target operating system from the server.
4. The method of claim 1 further comprising:
  - booting the target operating system based on the instructions.
5. The method of claim 1 wherein the operating systems list includes a default operating system.
6. The method of claim 1 further comprising:
  - relocating the network bootstrap program after the target operating system is selected.

7. The method of claim 1 wherein the target operating system is determined from a configuration file of the target device.

8. The method of claim 1 wherein the target operating system is selected by a user of the target device.

9. The method of claim 8 further comprising:  
determining from a user profile, at least one -available operating system; and  
including the user-available operating system with the operating systems list.

10. The method of claim 1 further comprising:  
determining from a target device profile, at least one device-available operating system; and  
including the device-available operating system with the operating systems list.

11. Computer program product in a computer usable medium for selecting an operating system at a target device, comprising:

means for initiating network bootstrap program code at the target device;

means for receiving a command requesting an operating systems list of at least one operating system;

means for sending the operating systems list to the target device before an operating system is executed at the target device; and

means for receiving a selection of a target operating system from the operating systems list,  
wherein the target device is to be remotely booted by the server.

12. The program of claim 11 further comprising:  
means for sending the target operating system to the target device.
13. The program of claim 11 further comprising:  
means for determining a default operating system.
14. The program of claim 11 further comprising:  
means for relocating the network bootstrap program code after the target operating system is selected.
15. The program of claim 11 further comprising:  
means for determining the target operating system from a configuration file of the target device.
16. The program of claim 11 further comprising:  
means for receiving the selection of the target operating system from a user of the target device.
17. The program of claim 16 further comprising:  
means for determining at least one operating system available to the user.
18. A network data processing system comprising:  
means for initiating a network bootstrap program at a target device, the target device to be remotely booted by the server;  
means for sending a command requesting an operating systems list of at least one operating system;

means for receiving the operating systems list prior to executing an operating system at the target device; and

means for selecting a target operating system from the operating systems list at the target device.

19. The system of claim 18 further comprising:

means for receiving the target operating system at the target device.

20. The system of claim 18 further comprising:

means for executing the target operating system at the target device.

21. The system of claim 18 further comprising:

means for relocating the network bootstrap program after the target operating system is selected.

22. The system of claim 18 further comprising:

means for determining the target operating system from a configuration file of the target device.

23. The system of claim 18 further comprising:

means for determining the target operating system from input of a user of the target device.



## **EVIDENCE APPENDIX**

This appeal brief presents no additional evidence.

## **RELATED PROCEEDINGS APPENDIX**

This appeal has no related proceedings.